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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

BRADLEY N. THOMA, a single person,

Plaintiff,

vs.

CITY OF SPOKANE, a municipal  
corporation in and for the State of  
Washington; and ANNE E. KIRKPATRICK,  
a single person,

Defendants.

NO. CV-12-156-EFS

DEFENDANTS' ANSWER TO  
PLAINTIFF'S COMPLAINT FOR  
DAMAGES

Come now the defendants, City of Spokane and Anne E. Kirkpatrick, by and  
through their undersigned attorney, and answer the plaintiff's Complaint for Damages  
as follows:

1. Answering paragraph 1, these defendants admit, on information and  
belief.

2. Answering paragraph 2, these defendants admit.

3. Answering paragraph 3, these defendants admit.

DEFENDANTS' ANSWER TO PLAINTIFF'S  
COMPLAINT FOR DAMAGES - 1

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1           4.     Answering paragraph 4, these defendants admit.

2           5.     Answering paragraph 5, these defendants admit that jurisdiction and  
3 venue are proper in the Eastern District of Washington.  
4

5           6.     Answering paragraph 6, these defendants admit.

6           7.     Answering paragraph 7, these defendants deny, and state that plaintiff  
7 was promoted to the rank of "Police Officer First Class" on January 2, 1994.  
8

9           8.     Answering paragraph 8, these defendants admit.

10          9.     Answering paragraph 9, these defendants admit.

11          10.    Answering paragraph 10, these defendants are without sufficient  
12 knowledge or information to form a belief as to the truth or veracity of said paragraph  
13 and therefore deny the same.  
14

15          11.    Answering paragraph 11, these defendants are without sufficient  
16 knowledge or information to form a belief as to the truth or veracity of said paragraph  
17 and therefore deny the same  
18

19          12.    Answering paragraph 12, these defendants admit that on September  
20 23, 2009, plaintiff drove his personal vehicle while under the influence of alcohol (.17  
21 BAC), collided with another attended vehicle and left the scene of that collision  
22 without making contact with the other driver. Further, defendants admit that plaintiff  
23 was followed approximately two miles to a parking lot where he was confronted by  
24 the other driver. Further admit that plaintiff was evaluated by law enforcement  
25 officers from the Spokane County Sheriff's Office and the State Patrol and arrested  
26 for driving under the influence. Subsequently, the Spokane County Prosecutor's  
27  
28

1 Office charged him with both Driving Under the Influence and Attended Hit and Run.  
2 (RCW 46.52.020)

3 13. Answering paragraph 13, these defendants admit.

4 14. Answering paragraph 14, these defendants admit that December 14,  
5 2009, Defendant Kirkpatrick received a faxed handwritten note from a "Dr. Mark Hart,  
6 D.O." asserting that he had diagnosed Plaintiff with alcoholism. As to whether this  
7 document constitutes a "formal diagnosis of alcoholism" defendants are without  
8 sufficient knowledge or information to form a belief as to the truth or veracity of said  
9 paragraph and therefore deny the same.

10 15. Answering paragraph 15, these defendants admit that on November 13,  
11 2009, the Spokane County District Court granted an Order deferring Prosecution of  
12 Plaintiff's Driving Under the Influence charge, but deny that this document refers to  
13 any "diagnosis" of alcoholism. As to the remaining allegations in this paragraph,  
14 these defendants admit.

15 16. Answering paragraph 16, these defendants admit.

16 17. Answering paragraph 17, these defendants deny they had "actual  
17 knowledge" of Plaintiff's alleged "alcohol disability" or any details of his  
18 "corresponding alcoholism disability treatment", but admit knowledge of the deferred  
19 prosecution order and the Ignition Interlocker waiver form.

20 18. Answering paragraph 18, these defendants are without sufficient  
21 knowledge or information to form a belief as to the truth or veracity of any "alcohol  
22 disability treatment" Plaintiff received, and therefore deny this claim. Defendants

1 admit they were aware of the terms included in the deferred prosecution order, and  
2 admit that Plaintiff worked as a Spokane Police Officer for approximately 20 years.

3  
4 19. Answering paragraph 19, these defendants admit that a *Loudermill*  
5 hearing was held on December 17, 2009, and admit that Plaintiff made various  
6 requests, but deny that the requested accommodations were reasonable.

7  
8 20. Answering paragraph 20, these defendants are without sufficient  
9 knowledge or information to form a belief as to the truth or veracity of the allegation  
10 that Plaintiff "acknowledged and took responsibility for the unfortunate September  
11 2009 off-duty incident", and therefore deny. As to the remaining allegations in the  
12 paragraph, these defendants deny.

13  
14 21. Answering paragraph 21, these defendants deny that any  
15 accommodations proposed by Plaintiff were reasonable and deny that the HRC has  
16 ever reached any conclusions regarding their investigation because Plaintiff withdrew  
17 his complaint. Defendants admit that other Spokane Police officers charged with  
18 DUI without an additional charge of hit and run attended were disciplined but did  
19 retain their jobs.

20  
21  
22 22. Answering paragraph 22, these defendants deny all allegations  
23 contained in this paragraph. Plaintiff never made any reasonable requests for  
24 accommodation. In fact, Plaintiff rejected defendants' reasonable accommodations  
25 made during the course of the *Loudermill* hearing, to wit: offer to place him on lay off  
26 status (rather than termination) until his license to drive was unencumbered and he  
27 could fulfill the essential functions of the job of a police officer; guaranteeing him the  
28

1 right to immediately return to a commissioned status following the successful  
2 completion of his deferred prosecution requirements; offering to find another job  
3 within the City for which he was qualified and for which he would have priority  
4 pending resolution of his driving restrictions. Plaintiff rejected all these offers in a  
5 letter written by his present counsel on December 21, 2009.  
6

7 23. Answering paragraph 23, these defendants deny.  
8

9 24. Answering paragraph 24, these defendants are without sufficient  
10 knowledge or information to form a belief as to the truth or veracity of the state of  
11 mind of Plaintiff and thus deny any allegations as to what prompted his complaint,  
12 since withdrawn, to the Human Rights Commission on December 11, 2009.  
13

14 25. Answering paragraph 25, these defendants are without sufficient  
15 knowledge or information to form a belief as to the truth or veracity of the allegations  
16 regarding Plaintiff's actions, and thus deny. Defendants admit that on December 14,  
17 2009, a faxed handwritten document was sent to Defendant Kirkpatrick from "Dr.  
18 Mark Hart, D.O." containing multiple legal conclusions and opinions as well as  
19 employment recommendations for which he is unqualified to render any opinion. As  
20 to the contention that the City "intentionally ignored" Plaintiff's claimed disability of  
21 alcoholism, that is denied.  
22

23 26. Answering paragraph 26, these defendants deny all allegations of  
24 wrongful or actionable misconduct by any defendant.  
25

26 27. Answering paragraph 27, these defendants deny all allegations of  
27 wrongful, coercive or discriminatory conduct by any defendant.  
28

1           28.    Answering paragraph 28, these defendants deny.

2           29.    Answering paragraph 29, these defendants admit that Plaintiff was  
3 terminated on December 21, 2009 after he rejected defendants' reasonable offer to  
4 accommodate him and facilitate his eventual reentry into the SPD workforce.  
5

6           30.    Answering paragraph 30, these defendants admit.

7           31.    Answering paragraph 31, these defendants admit.

8           32.    Answering paragraph 32, these defendants admit that on January 5,  
9 2011, discussions were initiated between Guild counsel and the City regarding the  
10 possibility of returning Plaintiff to the demoted rank of Detective. As to the remainder  
11 of this paragraph, it is denied.  
12

13           33.    Answering paragraph 33, these defendants admit that Defendant  
14 Kirkpatrick sent an email on January 7, 2011, the email speaks for itself, but deny the  
15 remainder of the allegations and characterizations in this paragraph.  
16

17           34.    Answering paragraph 34, these defendants deny.

18           35.    Answering paragraph 35, these defendants admit that representatives  
19 of the parties reached a tentative agreement contingent on approval by the Human  
20 Rights Commission as well as the Spokane City Council.  
21

22           36.    Answering paragraph 36, these defendants are without sufficient  
23 knowledge or information to form a belief as to the truth or veracity of the statements  
24 and therefore deny.  
25

26           37.    Answering paragraph 37, these defendants admit that a Settlement  
27 Agreement was proposed and signed by the City and Plaintiff, however that  
28

1 agreement was rejected by a necessary party, the Human Rights Commission, and  
2 thus was never fully executed.

3  
4 38. Answering paragraph 38, these defendants admit that Mayor Condon  
5 made some comments, but deny that they are accurately reflected in this paragraph.

6 39. Answering paragraph 39, these defendants deny.

7  
8 40. Answering paragraph 40, these defendants admit that Plaintiff withdrew  
9 his Human Rights Commission and made a new settlement demand with a  
10 requested response from the City by February 29, 2012. Defendants further admit  
11 that Plaintiff chose to file this Complaint on February 28, 2012, before the City had an  
12 opportunity to respond to his new demand.

13  
14 **FIRST CAUSE OF ACTION**  
15 **(Discrimination – RCW 49.60, et seq.; 42 U.S.C. § 12101 et seq.)**

16 41. Answering paragraph 41, these defendants repeat their answers to  
17 paragraphs 1 through 40 above as if fully set forth.

18 42. Answering paragraph 42, these defendants deny.

19  
20 43. Answering paragraph 43, these defendants deny.

21 44. Answering paragraph 44, these defendants deny.

22 45. Answering paragraph 45, these defendants deny.

23  
24 46. Answering paragraph 46, these defendants deny.

25 47. Answering paragraph 47, these defendants deny.

26 **SECOND CAUSE OF ACTION**  
27 **Breach of Contract**

1           48. Answering paragraph 48, these defendants repeat their answers to  
2 paragraphs 1 through 47 above as if fully set forth.

3           49. Answering paragraph 49, these defendants deny.  
4

5           50. Answering paragraph 50, these defendants deny.

6           51. Answering paragraph 51, these defendants deny.  
7

8           52. Answering paragraph 52, these defendants deny.

9                           **THIRD CAUSE OF ACTION**  
10                          **(Fourteenth Amendment Violations – 42 U.S.C. § 1983)**

11           53. Answering paragraph 53, these defendants repeat their answers to  
12 paragraphs 1 through 52 above as if fully set forth.

13           54. Answering paragraph 54, these defendants deny.  
14

15           55. Answering paragraph 55, these defendants deny.

16                           **FOURTH CAUSE OF ACTION**  
17                          **(Vicarious Liability)**

18           56. Answering paragraph 56, these defendants repeat their answers to  
19 paragraphs 1 through 55 above as if fully set forth.

20           57. Answering paragraph 57, these defendants admit that the City is  
21 vicariously liable for acts by Defendant Kirkpatrick performed within the scope of her  
22 employment. As to the remaining allegations, they are so vague that no response is  
23 possible, but to the extent that a response is called for, they are denied.  
24

25                           **FIFTH CAUSE OF ACTION**  
26                          **(Infliction of Emotional Distress)**  
27  
28



1           58. Answering paragraph 58, these defendants repeat their answers to  
2 paragraphs 1 through 57 above as if fully set forth.

3  
4           59. Answering paragraph 59, these defendants deny.

5                           **SIXTH CAUSE OF ACTION**  
6                           **(Negligence/Gross Negligence)**

7           60. Answering paragraph 60, these defendants repeat their answers to  
8 paragraphs 1 through 59 above as if fully set forth.

9           61. Answering paragraph 61, these defendants deny.

10          62. Answering paragraph 62, these defendants deny.

11          63. Answering paragraph 63, these defendants deny.

12          64. Answering paragraph 64, these defendants deny.

13                           **SEVENTH CAUSE OF ACTION**  
14                           **(Outrage)**

15           65. Answering paragraph 65, these defendants repeat their answers to  
16 paragraphs 1 through 64 above as if fully set forth.

17          66. Answering paragraph 66, these defendants deny.

18          67. Answering paragraph 67, these defendants deny.

19                           **EIGHTH CAUSE OF ACTION**  
20                           **(Wrongful Withholding of Wages)**

21           68. Answering paragraph 68, these defendants repeat their answers to  
22 paragraphs 1 through 67 above as if fully set forth.

23          69. Answering paragraph 69, these defendants deny.

24          70. Answering paragraph 70, these defendants deny.

1 71. Answering paragraph 71, these defendants deny.

2 **NINTH CAUSE OF ACTION**  
3 **(Retaliation)**

4 72. Answering paragraph 72, these defendants repeat their answers to  
5 paragraphs 1 through 71 as if fully set forth.

6  
7 73. Answering paragraph 73, these defendants deny.

8 74. Answering paragraph 74, these defendants deny.

9 75. Answering paragraph 75, these defendants deny.

10 76. Answering paragraph 76, these defendants deny.

11 **TENTH CAUSE OF ACTION**  
12 **(Promissory Estoppel/Implied Contract)**

13  
14 77. Answering paragraph 77, these defendants repeat their answers to  
15 paragraphs 1 through 76 as if fully set forth.

16 78. Answering paragraph 78, these defendants deny.

17 79. Answering paragraph 79, these defendants deny.

18 80. Answering paragraph 80, these defendants deny.

19 81. Answering paragraph 81, these defendants deny.

20 **ELEVENTH CAUSE OF ACTION**  
21 **(Equitable Estoppel)**

22  
23 82. Answering paragraph 82, these defendants repeat their answers to  
24 paragraphs 1 through 81 as if fully set forth.

25 83. Answering paragraph 83, these defendants deny.

1 84. Answering paragraph 84, these defendants deny.

2 85. Answering paragraph 85, these defendants deny.

3  
4 **AFFIRMATIVE DEFENSES**

5  
6 FOR FURTHER ANSWER, and as AFFIRMATIVE DEFENSES, the  
7 defendant(s) allege(s) as follows:

8  
9 1. The plaintiff has failed to state a claim upon which relief may be granted.

10 2. Vicarious liability is not applicable to the facts or legal principle alleged  
11 in this complaint and, therefore, Defendant Kirkpatrick is not vicariously liable for any  
12 actions attributable solely to the defendant City of Spokane.

13  
14 3. Plaintiff's injuries and damages, if any, are barred by plaintiff's failure to  
15 mitigate such injury or damage.

16  
17 4. All actions of defendants herein alleged as negligence, manifest a  
18 reasonable exercise of judgment and discretion by authorized public officials made in  
19 the exercise of governmental authority entrusted to them by law and are neither  
20 tortious nor actionable.

21  
22 5. That the plaintiff's complaint fails to state a cause of action against the  
23 City of Spokane for, pursuant to Monell v. Department of Social Services of the City  
24 of New York, 436 U.S. 658, 98 S.Ct. 2018 (1978), there can be no recovery for a  
25 federal civil rights violation when there is no constitutional deprivation occurring  
26 pursuant to governmental custom or policy.  
27  
28

1           6. That pursuant to Harlow v. Fitzgerald, 102 S.Ct. 2727 (1982), Defendant  
2 Kirkpatrick is immune from liability pursuant to the Federal Civil Rights Act where she  
3 acted in good faith and entertained an honest, reasonable belief that her actions  
4 were necessary.  
5

6           7. The plaintiff's complaint does not state facts sufficient to constitute a  
7 cause of action against any defendant for negligence, because simple negligence,  
8 pursuant to the United States Supreme Court decision of Parratt v. Taylor, 451 U.S.  
9 527, 101 S.Ct. 1908 (1981), is not a Federal Civil Rights violation.  
10

11           8. The claim for punitive damages against the City of Spokane is not  
12 permitted. City of Newport v. Fact Concerts, 453 U.S. 247, 101 S.Ct. 2748 (1981) .  
13

14           9. The plaintiff's complaint fails to state a cause of action against the City  
15 for, pursuant to Monell v. Department of Social Services of the City of New York, 436  
16 U.S. 658, 98 S.Ct. 2018 (1978), there can be no recovery for a federal civil rights  
17 violation when there is no constitutional deprivation occurring pursuant to  
18 governmental custom or policy.  
19

20           10. The defendant City was not aware of any egregious conduct by its  
21 employees nor did the City react with deliberate indifference toward the constitutional  
22 rights of the plaintiff.  
23

24           11. Defendant Kirkpatrick is immune from suit and liability pursuant to the  
25 Federal Civil Rights Act because her conduct did not violate a clearly established  
26 federal right.  
27  
28

1           12. Defendants did not make any employment decision affecting plaintiff  
2 that was unlawful or discriminatory or motivated by an attempt to discriminate or  
3 retaliate on any basis, nor did any conduct of defendants result from any  
4 employment practice having a discriminatory or retaliatory object or impact.  
5

6           13. The plaintiff is a member of a collective bargaining unit, the Spokane  
7 Police Guild ("Guild"). The Guild has entered into a Collective Bargaining  
8 Agreement ("CBA") with the defendant City, and the plaintiff's employment and  
9 allegations in his Complaint are subject to the terms and conditions of the CBA.  
10

11           14. The plaintiff is considered to be a civil service employee under  
12 Washington law and the City of Spokane Civil Service Commission ("Commission").  
13 The plaintiff's employment is subject to the terms and conditions of the Commission,  
14 as are several of the allegations in his Complaint.  
15

16           15. The City has complied with the terms and conditions of the CBA and the  
17 Commission.  
18

19           16. The plaintiff and the Guild have filed a formal grievance under the CBA.  
20

21           17. The plaintiff has failed to exhaust administrative remedies available to  
22 him under the CBA or the Civil Service Commission.

23           Wherefore, having fully answered plaintiff's complaint, defendants pray as  
24 follows:  
25

26           1. The plaintiff's complaint be dismissed with prejudice and that plaintiff  
27 take nothing thereby.  
28

3. For other such relief as the court may deem appropriate.

s/Patrick J. Dalton  
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CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of March, 2012, I electronically filed the foregoing "Defendants' Answer to Plaintiff's Complaint for Damages" with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following:

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